

## 49.109-7 Settlement by determination.

(a) *General.* If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO shall issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference. The TCO shall comply with [49.109-1](#) through [49.109-6](#) in making a settlement by determination and with [49.203](#) in making an adjustment for loss, if any. Copies of determinations shall receive the same distribution as other contract modifications.

(b) *Notice to contractor.* Before issuing a determination of the amount due the contractor, the TCO shall give the contractor at least 15 days notice by certified mail (return receipt requested) to submit written evidence, so as to reach the TCO on or before a stated date, substantiating the amount previously proposed.

(c) Justification of settlement proposal.

(1) The contractor has the burden of establishing, by proof satisfactory to the TCO, the amount proposed.

(2) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO may request the contractor to submit additional documents and data, and may request appropriate accountings, investigations, and audits.

(3) The TCO may accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO may hold any conferences considered appropriate-

(i) To confer with the contractor,

(ii) To obtain additional information from Government personnel or from independent experts, or

(iii) To consult persons who have submitted affidavits or reports.

(d) *Determinations.* After reviewing the information available, the TCO shall determine the amount due and shall transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter shall advise the contractor that the determination is a final decision from which the contractor may appeal under the Disputes clause, except as shown in paragraph (f) of this section. The determination shall specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in [49.602-1](#) and by additional information, schedules, and analyses as appropriate. The TCO shall explain each major item of disallowance. The TCO need not reconsider any other action relating to the terminated portion of the contract that was ratified or approved by the TCO or another contracting officer.

(e) *Preservation of evidence.* The TCO shall retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO shall return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(f) *Appeals.* The contractor may appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the settlement proposal within the time

provided in the contract and failed to request an extension of time. The pendency of an appeal shall not affect the authority of the TCO to settle the settlement proposal or any part by negotiation with the contractor at any time before the appeal is decided.

(g) *Decision on the contractor's appeal.* The TCO shall give effect to a decision of the Claims Court or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO should obtain a release from the contractor. TCO's are authorized to modify the formats of settlement agreements in [49.603](#) to agree with this provision.

**Parent topic:** [49.109 Settlement agreements.](#)